IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Criminal Revision No. 1417 of 2006

Date of decision : July 18, 2007

Satnam Kaur and another

... Petitioners

versus

Onkar Singh and another

... Respondents

Coram: Hon'ble Mr. Justice A.N. Jindal.

Present: Mr. D.D. Sharma, Advocate
for the petitioners.

Mr. C.L. Panwar, Advocate
for the respondents.

A.N. Jindal, J

The precise question of law involved in the petition is whether the wife who strikes down the offer of her husband, refuses to keep him in the house and goes to the extent of seeking injunction against the entry of her husband in the house can still claim maintenance against him.

The factual matrix, essential for disposal of the petition filed by Satnam Kaur and Tardeep Kaur petitioners, is that Satnam Kaur was married to the respondent on 2.2.1986 and out of the wedlock two children namely Amardeep Kaur and Tardeep Kaur were born. After the marriage, the respondent-Onkar Singh (hereinafter referred to as 'the respondent') went to Dubai and he used to visit India and stay with the petitioners, but he started neglecting them for the last two years and stopped sending any money. Despite several letters written to the respondent, no maintenance was paid, as such the petitioners claimed a sum of Rs.500/- each on account of maintenance. It was further pleaded that the respondent is earning Rs.45,000/- per month.

In his reply, the respondent submitted that he has already paid more than Rs.7.00 lacs to the petitioners during his stay in Dubai. Now he

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has no source of income and is entitled to be maintained by the petitioner No.1. While admitting the factum of marriage and relations of the petitioner No.2 and Amardeep Kaur, he further submitted that the petitioner has been neglecting him since July, 1998. She turned him out from his house and filed a civil suit against him. He also gave Rs.80,000/- to Satnam Kaur petitioner No.1 on 13.4.1993 for purchase of plot in his name but she instead of purchasing the same in his name, purchased the same in her own name. She is still in possession of Rs.28,000/- which remained balance out of the aforesaid amount. The petitioner No.1 has involved him in civil litigation also.

Rejoinder was also filed.

During evidence, the petitioners examined Himmat Singh (PW1) and Satnam Kaur (PW2). On the other hand, the respondent examined Tarsem Singh (RW1), Harpal Singh (RW2) and Onkar Singh (RW3).

The trial Court vide its judgment dated 11.2.2005 accepted the application and awarded maintenance @ Rs.700/- per month each. However, the revisional Court accepted the revision petition and dismissed the application under Section 125 Cr.P.C.

The marathon arguments were advanced by the learned counsel for the petitioners that though she is living in the house, yet she is still entitled to maintenance as she has no source of income, but the evidence brought on record is to the contrary. The petitioner herself while appearing in the witness box as RW-2 admitted that she is stitching clothes of the people from where she is getting some money. She is not ready to live with the respondent even if he offers to live with her because she has lost faith in him. If the respondent offers, even then, she is not ready to part company of her children. She is not ready to do this, even if, the respondent stays with her in the same accommodation without keeping any relations with her. She has further reiterated that she cannot allow the respondent to live in her house and she obtained the injunction order against him. She could produce the copy of the injunction order. About income of the respondent, she admitted that she does not know what is the source of income of the respondent and she cannot tell if he earns anything or not. Regarding the

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offer to keep the children, she has admitted that the respondent had approached the Court for the custody of the children. Regarding adultery, she has flatly refused to disclose her relations with ASI Gurcharan Singh.

The law of maintenance has been brought to the statute book to help, with an object to aid and assist the helpless, destitute and non earning parents, women and children, particularly ladies who have been deserted and neglected to be maintained by their husbands so that they may not be exploited, misused or condemned by the society for having no means for their survival or for the reasons that they may not rendered as beggars for want of necessary means for their livelihood. But, it has been invariably seen that the provisions of Section 125 Cr.P.C. are being misused. In order to save the misuse, the legislature in its wisdom incorporated Section 125 (4) Cr.P.C. which mandates that no wife shall be entitled to receive an allowance from her husband if she is living in adultery, or if , without any sufficient reason, she refuses to live with her husband, or if, they are living separately by mutual consent. Sub-section 5 enables the husband to prove that the wife in whose favour an order has been made is living in adultery or that without sufficient reason she has refused to live with her husband or that they are living separately by mutual consent and he can apply for cancellation of the maintenance as ordered by the Court. The relevant provision i.e. sub-section (4) of Section 125 Cr.P.C. reads as under :-

> *"(4) No wife shall be entitled to receive an (allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be) from her husband under this section if she is living in adultery, or if , without any sufficient reason, she refuses to live with her husband, or if they are living separately by mutual consent."*

From the bare reading of the aforesaid provisions it is inevitable that the husband is entitled to resist the claim for maintenance raised by the wife either on the ground that the wife is living in adultery; or the wife has refused to live with her husband without any sufficient reason or on the ground that they are living separately by mutual consent.

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However, it has been made clear that if the wife proves that she had sufficient reasons to refuse to live with him, then an order or maintenance had to be granted provided that the wife is unable to maintain herself and the husband has sufficient means to maintain her. The primary object of the section is to prevent starvation and vagrancy. If that be so, can a wife, who is able to maintain herself, still can claim maintenance on establishing that she is living away from her husband without any cause. The evidence reveals that when he was away and had been sending money from Dubai, from where she purchased the house and part of that money was kept for herself and when he returned from Dubai, she turned hostile and turned him out and did not allow him to live with her. She approached the Court to seek injunction restraining him from entering in the house. The factum that the husband has treated the petitioner with cruelty and for that reason she started living separate, has not been proved by her by leading cogent evidence on the record. The case of the respondent from the very beginning is that the petitioner has refused to allow him to enter in the house. Irrespective of the fact that he has failed to establish the adultery of his wife with ASI Gurcharan Singh, yet, the repeated offers made by him from the very beginning and also when the respondent appeared in the witness box as RW-2, have been turned down for no good reasons. The parties have now entered in the evening of their lives. The children are grown up. One of the daughter is married. The other has become major and living with the respondent. The cruelty, as alleged, has not been proved, rather it has been admitted by the petitioner that she is earning out of stitching the clothes, whereas she has not replied properly regarding the income of the respondent. As such, the provisions of Section 125 (4) Cr.P.C. are definitely attracted in this case, which dis-entitles her to seek maintenance.

Consequently, finding no merits in the revision petition, the same is hereby dismissed.

July 18, 2007 **(A.N. Jindal)**
deepak **Judge**

To be referred to the Reporter : Yes/No.